

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case
10-CA-167896

Date Filed
1-19-16

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer MillerCoors, LLC		b. Tel. No. 312-496-5852
		c. Cell No.
		f. Fax No.
d. Address (Street, city, state, and ZIP code) 250 S. Wacker Dr., S.800, Chicago, IL 60606	e. Employer Representative Gavin Hattersley	g. e-Mail
		h. Number of workers employed 450
i. Type of Establishment (factory, mine, wholesaler, etc.) Brewery	j. Identify principal product or service Production and distribution of beer	
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 5 of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Concerning the proposed closure of the Eden brewery, the Employer has engaged in a pattern of bad faith bargaining violations including concealing and misrepresenting critical facts in bargaining, refusing to provide relevant information and refusing to negotiate over mandatory subjects.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)
Teamsters Brewery & Soft Drink Workers Conference and Teamsters Local 391

4a. Address (Street and number, city, state, and ZIP code) 25 Louisiana Ave. N.W. Washington, D.C.20001 3910 Teamsters Place, Colfax, N.C. 27235	4b. Tel. No. 202-624-6921
	4c. Cell No.
	4d. Fax No. 202-624-8137
	4e. e-Mail laughton@teamsters633.com

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)
International Brotherhood of Teamsters

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By 
(signature of representative or person making charge)

Robert M. Baptiste, Counsel
(Print/type name and title or office, if any)

Tel. No. **202-223-0723**

Office, if any, Cell No.
202-258-3513

Fax No. **202-223-9677**

e-Mail
Rbaptiste@bapwild.com

Address **1150 Conn. Ave.,NW, Ste. 315, Washinton, D.C. 20036** **1/15/16**
(date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

SUBREGION 11
4035 University Pkwy Ste 200
Winston Salem, NC 27106-3275

Agency Website: www.nlrb.gov
Telephone: (336)631-5201
Fax: (336)631-5210



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January 19, 2016

Gavin Hattersley
MillerCoors, LLC
250 S Wacker Dr Ste 800
Chicago, IL 60606-5888

Re: MillerCoors, LLC
Case 10-CA-167896

Dear Mr. Hattersley:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Examiner JENNIFER G. CORBIN whose telephone number is (336)631-5196. If this Board agent is not available, you may contact Deputy Regional Attorney LISA R. SHEARIN whose telephone number is (336)631-5256.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent.

January 19, 2016

Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website, www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. NLRB Form 4541 offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

Claude T. Harrell Jr.
Regional Director



By:

Lisa R. Shearin
Acting Officer in Charge

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

SUBREGION 11
4035 University Pkwy Ste 200
Winston Salem, NC 27106-3275

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January 19, 2016

International Brotherhood of Teamsters, Local 391
3910 Teamsters Pl
Colfax, NC 27235-5600

Re: MillerCoors, LLC
Case 10-CA-167896

Dear Sir or Madam:

The charge that you filed in this case on January 19, 2016 has been docketed as case number 10-CA-167896. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Examiner JENNIFER G. CORBIN whose telephone number is (336)631-5196. If this Board agent is not available, you may contact Deputy Regional Attorney LISA R. SHEARIN whose telephone number is (336)631-5256.

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If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

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We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

Claude T. Harrell Jr.
Regional Director



By:

Lisa R. Shearin
Acting Officer in Charge

cc: Robert M. Baptiste, ESQ.
Baptiste & Wilder, P.C.
1150 Connecticut Ave, N.W.
Suite 315
Washington, DC 20036-4104

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

Teamsters Brewery & Soft Drink Workers Conference
and Local 391,

Charging Party

and

MillerCoors LLC,

Respondent

CASE 10-CA-167896

☒ REGIONAL DIRECTOR

☐ EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

☐ GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF _____

MillerCoors LLC

IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ REPRESENTATIVE IS AN ATTORNEY

☐ IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.

(REPRESENTATIVE INFORMATION)

NAME: John F. Wymer, III

MAILING ADDRESS: 1555 Peachtree St. NE, Suite 850, Atlanta, GA 30309

E-MAIL ADDRESS: jwymer@shermanhoward.com

OFFICE TELEPHONE NUMBER: 404-567-4376

CELL PHONE NUMBER: _____ FAX: 404-567-4416

SIGNATURE: _____

(Please sign in ink.)

DATE: _____

16 February 2016

¹ IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.

SHERMAN & HOWARD

Two Peachtree Pointe, 1555 Peachtree St., NE, Suite 850 Atlanta, Georgia 30309-2460
Telephone: 404.567.4415 Fax: 404.567.4416 www.shermanhoward.com

John F. Wymer, III
Sherman & Howard L.L.C.
Direct Dial Number: 404.567.4376
E-mail: jwymer@shermanhoward.com

February 26, 2016

Via E-mail and First Class Mail

Jennifer G. Corbin, Esq.
National Labor Relations Board
Sub Region 11
4035 University Pkwy Suite 200
Winston Salem, NC 27106-3275

Re: MillerCoors, LLC
Case 10-CA-167896

Dear Ms. Corbin:

This letter and accompanying documents comprise MillerCoors' statement of position submitted in connection with the referenced case.¹ The charge alleges that MillerCoors (the "Company") violated Section 8(a)(5) of the Act as to its decision to cease operations at the Eden, North Carolina brewery. The Company denies the allegations of the charge and respectfully requests that the Region obtain a withdrawal of the charge or, alternatively, dismiss it. For the same and other reasons, there is no basis for 10(j) relief.

I. Important Historical/Background Information Essential to the Case

Prior to July 1, 2008, the three largest (by market share) companies making beer in the United States were Anheuser-Busch², Miller Brewing Company ("Miller") and Molson Coors ("Coors"). Anheuser Busch operated twelve (12) U.S. breweries; Miller had six (6) breweries and Coors operated two (2) breweries.

¹ This letter and documents are confidential and are being sent with the understanding they are subject to the protections of the Freedom of Information Act and the Federal Records Act.

² Acquired by InBev in 2008, the business is now "AB InBev."

For a number of reasons it made sense in 2008 for Miller and Coors to form a joint venture ("JV") to compete more effectively and efficiently against the United States' largest brewer, AB Inbev, as well as other companies selling beer in the U.S. As a result of the JV, Miller's 6 major³ breweries (Trenton, OH; Irwindale, CA; Milwaukee, WI; Fort Worth, TX; Albany, GA; Eden, NC) combined with Coors' 2 breweries (Golden, CO; Elkton, VA, also known as "Shenandoah") to create an integrated 8-brewery production, packaging and distribution system.⁴

One of the JV's benefits was that legacy Miller breweries could begin making, packaging and transporting Coors products (primarily Coors Banquet, Coors Light, Blue Moon, Killian's and Keystone) and legacy Coors facilities could begin making, packaging and transporting Miller products (including Miller Lite, Miller High Life and Miller Genuine Draft). It does, however, take a certain amount of time before a brewing network can become fully integrated by developing the capability to produce multiple different brands at different facilities.

Although the JV brought synergies to both Miller and to Coors, no brewer would ever put two breweries within 190 miles of each other, as is the case with Shenandoah, VA and Eden, NC. Neither would a brewer locate a brewery in between Shenandoah and Albany, Georgia, another MillerCoors facility. Stated differently, the Shenandoah/Eden/Albany juxtaposition was, from the beginning, not something Miller or Coors would have created on their own.

Despite being geographically proximate, Shenandoah and Eden are quite different facilities. Miller opened Eden in 1978. Coors opened Shenandoah as a packaging operation only in 1987. Not until 2007 did Coors add a state-of-the-art brewing operation there. The Shenandoah brewing operation is thus 29 years newer and far more efficient than the one in Eden.

At the time the JV was formed, its annual beer volume was approximately (b) (4) barrels. As of the end of 2015, annual volume has declined almost (b) (4) to approximately (b) (4) million barrels. (A quarter-by-quarter presentation of the Company's beer volume from 2008

³ I use the word "major" because MillerCoors also operates a smaller brewery in Chippawa Falls, WI that makes a specialty beer known as Leinenkugel's.

⁴ For brewing companies like MillerCoors, their business is comprised of three primary operations (1) brewing (making) the beer, (2) packaging the beer (which means putting the beer into cans, bottles, or kegs), and (3) transporting the product to distributors (wholesalers) who then sell the beer to retailers.

through and including 2015 is enclosed as Exhibit A.) The decline in volume is projected to continue.⁵

2014

After seven consecutive years of shrinking demand, MillerCoors was forced in 2014 to conduct a study (referred to as "Project Blue") of its brewery network capacity. (A summary of that study is included with this letter as Exhibit B). The slide (Ex. B, p.3) titled "Brewery Closure Analysis – Potential Volume Scenarios" reflects that volume in 2008 was, as mentioned above, approximately (b) (4) barrels. By 2014, volume had shrunk to slightly over (b) (4) barrels. (Ex. A.) The slide notes that if volume continues to decline at the same rate, MillerCoors would reach the point where it would make no business sense to continue to operate 8, as opposed to 7, breweries.⁶

The brewing industry, like others, is seasonal in nature. People consume beer throughout the year, but they consume a lot more in July than they do in December. The "peak season" is the time of the year – typically late Spring through Summer – when the highest volume of beer is produced and shipped. Brewing capacity is a pinch point – the packaging and shipping of beer cannot occur if the brewing operation does not make enough beer in the first place.

Exhibit B reflects that if volume declines to (b) (4) barrels, even peak season production can be accomplished with one fewer brewery. The slide depicts a "best case," "worst case" and "current trend" timeline (Ex. B, p. 3). The 2014 "current trend" timeline projects a need for a brewery closure sometime in 2017 or 2018. Unfortunately, the trend worsened.

Exhibit B also contains charts showing the current locations and the optimum locations of the JV's eight breweries. The charts on "Optimal Greenfield Network" (p. 7) and "Best 7 Breweries Based on Freight" (p. 8) show that Shenandoah is a better location than Eden from a transportation and logistics standpoint. (These Greenfield analyses are generated by a computer program known as ILOG, designed to provide guidance to companies in the manufacturing and distribution business as to where best to locate their facilities.)

⁵ Several factors are contributing to the ongoing decline in volume. Consumer palates have changed, including movement of consumers from beer into wine and spirits, and similar movement to imported beer, particularly Mexican brands ("stay thirsty, my friends"). Within the U.S., thousands more breweries have sprung up across the country, as "craft" beer has grown dramatically in volume. While the eight large breweries in the MillerCoors' production network produce a variety of beers, the focus when they were built was the ability to brew and package large quantities of premium light beer, such as Miller Lite and Coors Light. Those brands have been adversely affected by the change in the beer industry, resulting in a loss of over (b) (4) barrels of volume annually.

⁶ The slide also addresses the possibility of closing a second brewery if volume were to decline to (b) (4) barrels a year.

Exhibit B also gives a forecast of expenses and savings associated with a brewery closure, comparing an Eden closure scenario with a Shenandoah closure scenario (p. 10). If a brewery closes, the beer brands produced there must be produced at other breweries.⁷ There are costs and expenses associated with closing a brewery and transferring production elsewhere.

Although there are capital costs associated with equipping other breweries to handle new brands, there are capital cost savings due to not having to spend money on ongoing capital improvements at the closed facility. There are also freight costs and freight savings. There are material costs and material savings, such as the cost difference between using less expensive bulk glass bottles (which Shenandoah can do) versus using more expensive cased glass (which Eden has to do). Maintenance costs of a new facility are substantially less than those at an old facility. Page 16 of the study titled "Top 4 Factors Compelling This Decision" discusses the four key reasons why an Eden closure scenario in 2017 or 2018, if volume continued to decline, makes more sense than a Shenandoah closure scenario. Those factors are:

(b) (4)



⁷ Following the Eden closure, brands formerly made in Eden will be made in Albany (IAM), Shenandoah, Fort Worth (Teamsters), Milwaukee (multiple unions) and Trenton (UAW).

(b) (4)



In 2014, total annual cost savings by closing Eden instead of Shenandoah were projected to be (b) (4). Those are not one-time cost savings, those are annual cost savings. MillerCoors leadership presented this analysis (Exhibit B) in July 2014 to the MillerCoors' Board of Directors ("BOD"). Because the analysis, based on then-current volume trends, did not indicate it would be prudent to close a brewery until 2017 or 2018, MillerCoors management did not recommend closing Eden (or any brewery) in July 2014. The BOD agreed and made no decision to close Eden (or any brewery) in July 2014. The Company remained hopeful the decline in volume would ease or even reverse itself. It did not happen.

Before moving to a discussion of 2015, it is important to keep in mind one thing. As of the end of 2014, there had been *no* decision made to close *any* brewery, much less to close a specific brewery. The 2014 study was purely a "what if" analysis which MillerCoors hoped would never have to be implemented.

2015

In 2015, MillerCoors updated the study it had done in 2014. In August 2015, the BOD reviewed the updated study. (A copy of the materials from the August 3, 2015 BOD meeting is attached as Exhibit C). Page 2 of Exhibit C is titled "Executive Summary." As stated there, the 2015 decline in volume had accelerated, resulting in a volume forecast of (b) (4) barrels in 2016, rather than 2017 or 2018.⁸ That meant that peak season demand in 2017 and beyond could be met comfortably with 7 breweries, not 8. In addition to the considerations presented in the 2014 study, the 2015 study identifies additional reasons why closure of Eden rather than Shenandoah is the sensible choice (Ex. C, p. 2). Those reasons are brand and technology-related, not labor-related. The 2015 updated study forecasts more robust cost savings than forecast in the 2014 study.

⁸ As it turned out, by 2015 volume would decline to (b) (4) million barrels. (Ex. A.)

With volume declining faster than anticipated, on August 3, 2015, MillerCoors' senior management recommended that the Eden brewery be closed effective September 2016, at the end of the 2016 peak season. The BOD voted to approve the recommendation.

The Union seems to be confused as when the decision to close was made. Under the Company's Operating Agreement, there are certain "Reserved Matters" that can be done only with BOD approval, among those being "any decision to open or close any brewery." (Relevant excerpts from the Operating Agreement are enclosed as Exhibit D. A copy of the August 3, 2015 BOD resolution approving the Eden closure is enclosed as Exhibit E.) The first, last and only decision to close Eden was made August 3, 2015.

II. Summary of Allegations and the Company's Response

A. Bargaining Over the Decision to Close Eden Was Not Required Under Established Supreme Court and Board Law

In *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981), the Supreme Court explained the factors to be used in deciding if there is or is not a duty to bargain a decision that relates to the scope and direction of the enterprise. There the Court said there is no duty to bargain unless "the subject proposed for discussion is amenable to resolution through the collective bargaining process," noting that such decisions are "akin to the decision whether to be in business at all." 452 U.S. at p. 677.

Bargaining over a decision to close and/or relocate a plant is required *only* under the limited circumstances articulated in *Dubuque Packing Co.*, 303 NLRB 386 (1991).⁹ Under *Dubuque Packing*, in order for decisional bargaining to be required, it must first be shown that direct or indirect labor costs were a factor in the decision to close or relocate. *Dubuque Packing*, at p. 391. No such showing can be made here, where transportation costs, material costs, capital (infrastructure) savings, and fixed costs savings are the reasons for the decision.

In *Dorsey Trailers, Inc. v. NLRB*, 233 F.3d 831 (4th Cir. 2000), the Fourth Circuit held that an employer was not required to bargain over the decision to close a trailer manufacturing plant that was on strike and to relocate the work to a newly purchased facility. The Court of Appeals said the decision to relocate is "not amenable to resolution through the bargaining process." *Dorsey Trailers*, 233 F.3d at p. 842. The Court struck a balance in favor of an employer's "freedom to decide where to locate its business and where to invest its finite capital

⁹ Having been remanded back to the Board by the D.C. Court of Appeals, the decision is known as "*Dubuque Packing (II)*." The Board continues to apply *Dubuque Packing II* to decisions like the decisions at issue here. See, e.g., *Embarq Corporation*, 356 NLRB No. 125 (2011).

resources” *Dorsey Trailers*, 233 F.3d at p. 842. *See also, Embarq Corporation*, 356 NLRB No. 125 (2011) (finding no duty to bargain decision to close one of a network of call centers where the reason for closing was diminution of the employer’s customer base); *El Paso Electric Company*, 357 NLRB No. 186 (2012) (no duty to bargain closure decision where location had become too small and moving to a new location would have involved additional operating costs.)

Labor costs were never a consideration in the decision to close Eden. Wage rates at all the breweries are substantially equal, as are holidays, vacation and sick days. Health care plans vary a bit depending on the particular plan provided in a geographic area, but the Company works to keep all health care costs within the same basic parameters. As stated in *Embarq Corporation*, the decision was unrelated to “the wages, hours, or working conditions of the unit employee.” *Embarq Corporation* at p. 15.

Even if direct or indirect labor costs had been a factor in the decision (which they were not), *Dubuque Packing II* requires the General Counsel to establish that the Union could have offered concessions at the bargaining table that could have changed the decision. *Id.* If, and only if, such a showing were made would there be a duty to bargain over the decision. Even if the Union here had offered to work for minimum wage, the reasons for closing Eden would have remained the same. The Company had no duty to bargain over the decision to close.

There were no labor efficiency problems at Eden. As noted in various press releases, Eden is a strong performing brewery. It was “Brewery of the Year” in 2010, 2011 and co-brewery of the year with Shenandoah in 2012. The decision to close was dictated by factors beyond the control of the Eden employees, the Union or anyone for that matter – reduced transportation costs based on geography, cost of cased versus bulk glass bottles, on-going capital expenditures required to keep Eden running, and greater fixed costs associated with the fact that Eden is a sprawling, complex, 34-year old facility compared to Shenandoah which has a brew house 29 years newer and, due to automation, far more efficient.¹⁰

Just as the union in *El Paso Electric Company* could not make the building bigger, and as the Union in *Embarq Corporation* could not increase the customer base, the Union here could do nothing to make Eden as geographically close or closer to the major northeastern markets than

¹⁰ From a capital expenditure standpoint, from 2011 through 2014, the Company spent (b) (4) on Eden versus (b) (4) on Shenandoah. This reflects the added costs associated with maintaining an older facility. It also suggests that the Company had no plans to close Eden because the Company continued to invest capital in Eden.

Shenandoah; it could do nothing to make cased glass as inexpensive as bulk glass; it could do nothing to make Eden's 1978 brew house as efficient and automated as Shenandoah's 2007 brew house; it could do nothing to reduce Eden's annual capital expenditures to the same level as Shenandoah's; and it could do nothing to reduce Eden's fixed costs for running the brewery to the same level as Shenandoah's.

Under Board and Supreme Court precedent, there was no duty to bargain over the decision to close.

B. The Union's Allegation that MillerCoors Refused to Provide Relevant Information

Because the Union could have done nothing to affect the decision to close, it "logically follows that the [Employer] was not legally required to comply with the Union's information request to the extent that it dealt with the 'decision' to close." *Embarq Corporation*, 356 NLRB No. 125 at p. 17. (citing *BC Industries*, 307 NLRB 1275 (1992); *Cowels Communications*, 172 NLRB 1909 (1968)). But even though the Company was not required to provide the Union with decision-based information, it did so anyway.

Following the BOD's August 3, 2015 decision to close Eden, an employee meeting was scheduled at the brewery for early September 2015 to announce the decision. Before the decision was announced, (b) (6), (b) (7)(C), contacted Union leadership to give them a heads-up concerning the decision and the upcoming announcement.

On September 21, 2015, the Union wrote (b) (6), (b) (7)(C) a letter suggesting the parties negotiate over the decision and requesting information about the reasons for the decision. (A copy of the Union's letter is attached as Exhibit F).

On September 28, 2015, (b) (6), (b) (7)(C) wrote back explaining that labor costs were not a factor in the decision, and setting forth the reasons for the closure. (b) (6), (b) (7)(C) letter states that while there is no duty to bargain the decision, in the interest of cooperation and full disclosure, (b) (6), (b) (7)(C) was willing to provide highly confidential information concerning the reasons for the closure at an upcoming labor-management meeting scheduled for October 2016. (A copy of (b) (6), (b) (7)(C) letter to the Union is attached as Exhibit G).

At the October meeting, (b) (6), (b) (7)(C) gave the Union copies of the 2014 (Exhibit B) and 2015 (Exhibit C) studies on which the recommendation to close Eden, and the BOD's decision to do so, was based. (b) (6), (b) (7)(C) requested that the Union first sign a confidentiality agreement, which the Union did. (b) (6), (b) (7)(C) spent a significant amount of time going through the studies page by page,

and answering questions. Some of the Union's questions required additional research on (b) (6), (b) (7)(C) part. (b) (6), (b) (7)(C) answered those questions in a letter dated October 23, 2015. (A copy of the letter is attached as Exhibit H).

The Union was provided with the same presentation the BOD received in 2014 and again in 2015 when it approved the recommendation to close. Why the Union needs more information than that given to the BOD is unclear. Allegations that MillerCoors had a duty to provide information regarding the reason for closing Eden, or allegations that MillerCoors withheld relevant information, are untrue.

C. MillerCoors Negotiated In Good Faith During the 2014-2015 Contract Negotiations

MillerCoors negotiated in good faith throughout contract negotiations in the Fall of 2014 and in January 2015. As discussed above, the decision to close Eden was not made until several months later. Only the BOD can make a closure decision, and that did not happen until August 3, 2015. While MillerCoors had studied the brewery network in 2014, and while a brewery would have to be closed if volume dropped to (b) (4) barrels, until August 3, 2015, when 2015 peak season volume numbers were generally known and when volume forecasts for 2016 were being finalized, no decision had been made, so there was nothing to communicate.

The Board has, on similar facts, held that it is not bad faith bargaining to not announce a not-yet-final decision to close at the time contract negotiations are occurring. *See, e.g., The Liberal Market, Inc.*, 264 NLRB 807 (1982). There the Board noted the important distinction between a final decision to close an operation and a decision that is under consideration during bargaining, but not made until later. *Id.* at 815. *See, also Valley Mould & Iron Co.*, 226 NLRB 1211 (1976) (no violation of Section 8(a)(5) relating to alleged withholding or concealing information regarding elimination of unit positions, where possible job elimination was "in the wind" but not yet decided.)

To the extent the Union's allegation is that it has been deprived of the opportunity to engage in effects bargaining, the allegation is without merit. The Union was notified of the Company's decision to close Eden soon after it was made and before it was announced, a year prior to being implemented. Where effects bargaining is required, notice must be given "in a meaningful manner and at a meaningful time." *First National Maintenance Corp.*, 452 U.S. 666, 681-82 (1981). In *Komatsu America Corp.*, 342 NLRB 649 (2004), the Board found that an employer satisfied its effects bargaining obligation by notifying the Union in January of an outsourcing initiative to take place six months later. *Id.*, at 649. Here, for many months the

Company has offered to meet with the Union to negotiate the effects of the decision. So far, the Union has refused to meet.

III. There Were Two Decisions MillerCoors Had to Make

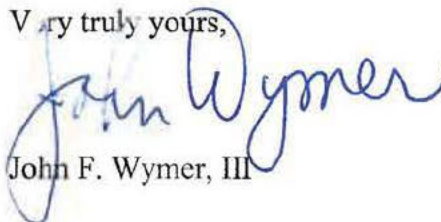
It is important to understand there were **two** decisions that resulted in this charge.

One decision was the decision to close *a* brewery, without regard to which one. That decision was dictated by one factor - - a (b) (4) barrel decline in volume down to (b) (4) barrels a year. (b) (4) barrels a year is a tipping point because it means that MillerCoors, with seven breweries, can meet peak season demand with the remaining breweries operating at (b) (4) of capacity. That also means, of course, that a 7-brewery network could meet rest-of-the-year demand at or below (b) (4) capacity. Neither the Company nor the Union are happy about the decline in demand, but it is beyond their control.

A separate decision was - if volume drops to (b) (4) barrels annually - *which* brewery would it make the most sense to close? Based on factors already discussed - geography, raw materials costs, obsolescence - the answer to that question was not a hard one.

For the reasons discussed above, MillerCoors respectfully requests that the case be dismissed or the charge withdrawn.

Very truly yours,



John F. Wymer, III

JFW, III

EXHIBIT F

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

JAMES P. HOFFA
General President

25 Louisiana Avenue, NW
Washington, DC 20001



KEN HALL
General Secretary-Treasurer

202.624.6800
www.teamster.org

September 21, 2015

(b) (6), (b) (7)(C)

MillerCoors, LLC
3939 West Highland Blvd.
Milwaukee, WI 53208

Dear **(b) (6), (b) (7)(C)**:

It is unfortunate that the Company chose to announce its intention to close the Eden brewery without any prior notice to the Brewery Conference or Local 391, the bargaining representative of these loyal and hard-working employees at Eden. What is worse, the reasons given for closing Eden were low volume sales and geography, neither of which is a new development. More importantly, your employees deserve the opportunity to explore alternatives to closure and the reasons why Eden was selected for that punishment.

Therefore, we demand a meeting to negotiate over the decision, to test the validity of the underlying assumptions and to explore alternatives to the closure of Eden. The Company

(b) (6), (b) (7)(C)

September 21, 2015

Page 2.

owes it to the employees and the community to negotiate in good faith with us to save these jobs. We already have had preliminary discussions with various governmental organizations and others to assist in this effort.

In order for this process to achieve success and for us to effectively fulfill our bargaining representative functions, we request the following information:

1. Copies of all studies, surveys, or reports produced internally, by outside consultants or any other source that were considered during the decision-making process, including documents that proposed alternatives to closing Eden.
2. Copies of comparisons between Eden and the other breweries of MillerCoors as to profitability, labor costs, costs per barrel, worker productivity, operating efficiency, and cost of upgrading production equipment that were considered during the decision-making process.
3. All documents reflecting potential liabilities for closing Eden before the expiration date of the collective bargaining agreement on November 18, 2017.

(b) (6), (b) (7)(C)

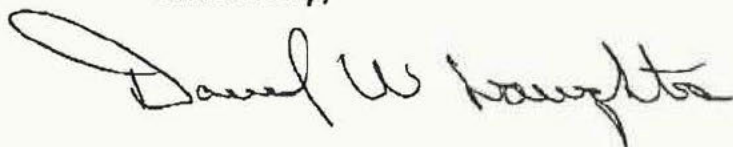
September 21, 2015

Page 3.

4. All documents reflecting the time line for evaluating the potential closing of Eden up to and including the date that the decision was made.

We realize that some of this information may be sensitive; therefore, we are prepared to execute an appropriate confidentiality agreement. In order to make progress toward a solution, we suggest that the information be provided on a rolling basis. Shortly, we intend to finalize our preliminary selection of dates for bargaining meetings.

Sincerely,



David W. Laughton, Director
Brewery & Soft Drink Workers
Conference, USA & Canada

DWL (b) (6), (b) (7)(C)

cc: (b) (6), (b) (7)(C) Miller Coors
(b) (6), (b) (7)(C) Miller Coors
(b) (6), (b) (7)(C) Miller Coors
Dave Foley, Business Agent, Teamsters Local Union 391

EXHIBIT G

September 28, 2015

David W. Laughton, Director
Brewery & Soft Drink Workers Conference, USA and Canada
International Brotherhood of Teamsters
25 Louisiana Ave., N.W.
Washington D.C. 20001

RE: Miller Coors - Eden Brewery

Dear Mr. Laughton:

I am writing in response to your letter of September 21, 2015 regarding the above matter. We share the Union's view that the closure of the Eden Brewery is most unfortunate. However, as you are undoubtedly aware, the continuing trend of reduced volume ultimately left the Company with no other choice.

With respect to your request to negotiate over the decision to close Eden, labor costs were not a factor in this decision, and the Company must therefore decline that request. The decision to close Eden was based upon network redesign (location), capital cost considerations with respect to a significantly older brewery at Eden compared to a more modern facility at Shenandoah, and raw material considerations such as the use of bulk glass at Shenandoah. In fact, production currently occurring at Eden will be distributed to a number of Company facilities, many of which are represented by the Teamsters or other labor organizations, and all of which have wage and benefit costs similar to or even greater than Eden.

In light of the foregoing, the Company has no duty to provide the Union with information relating to its decision to close. However, in the interests of cooperation and full disclosure, the Company will be prepared to provide relevant information demonstrating the compelling business case for the Eden closure, upon execution of an appropriate confidentiality agreement. I will provide that agreement to you at our October meeting. Assuming that the agreement is executed, I will then be prepared to provide and discuss that information when we meet to bargain over the effects of this decision.

David W. Laughton, Director
September 28, 2015
Page 2

Please be sure to contact me if you have any questions regarding the foregoing.

Sincerely,

(b) (6), (b) (7)(C)

Miller Coors LLC

Cc: Vernon Gammon

EXHIBIT H

October 23, 2015

David W. Laughton, Director
Brewery & Soft Drink Workers Conference, USA and Canada
International Brotherhood of Teamsters
25 Louisiana Ave., N.W.
Washington D.C. 20001

RE: Miller Coors - Eden Brewery

Dear Mr. Laughton:

I am writing as a follow-up to our meeting of two weeks ago, and after a telephone call from Vernon Gammon yesterday.

Mr. Gammon asked me whether the Company was intending to provide additional documents concerning the decision to close Eden. As the Company explained in an earlier letter and at our meeting, labor costs were not a factor in the decision to close Eden, so the Company declined the request to bargain over the decision, and the Company does not have a duty to provide the Union with information relating to the decision to close. But in the interests of cooperation and full disclosure, and after execution of a confidentiality agreement, the Company shared with you and Mr. Gammon documents and detailed information demonstrating the reasons for the Eden closure. It is not the Company's intent to provide additional documents about the decision. However, I do want to address a couple of things, based on our discussions at the meeting and questions you asked.

1. You asked about the respective capacity of the Eden and Shenandoah breweries. Eden is (b) (4) barrels, Shenandoah is (b) (4) barrels.
2. You asked about capital spending in the preceding years. In each year, more was spent in Eden than in Shenandoah:

\$M	EDN	SHE
2011	(b) (4)	
2012		
2013		
2014		

David W. Laughton, Director
October 23, 2015
Page 2

3. In the 2015 document that I shared with you, there is a chart establishing that as volume drops below (b) (4) barrels, the Company reaches a peak season utilization that enables a brewery closure in 2016. Mr. Gammon responded to this by saying that (b) (4) efficiency has not been achievable historically. I want to point out that what the chart is referring to, however, is brewing utilization, not efficiency. The point of the chart is that if we take (b) (4) of what each brewery says they are able to brew, the required volume can be produced with 7, rather than 8, breweries due to the decline in overall volume.

As I stated at our meeting, the Company remains available to engage in effects bargaining concerning the closure.

Please contact me if you have any questions regarding the foregoing.

Sincerely,

(b) (6), (b) (7)(C)

Miller Coors LLC

cc: Vernon Gammon

INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER**DO NOT WRITE IN THIS SPACE**

Case

10-CA-167896

Date Filed

03/11/2016

INSTRUCTIONS: AMENDED CHARGE

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer

MillerCoors, LLC

b. Tel. No. 312-496-5852

c. Cell No.

f. Fax No. 312-496-5879

d. Address (Street, city, state, and ZIP code)

250 S. Wacker Dr. S. 800, Chicago, IL 60606

e. Employer Representative

Gavin Hattersley

g. e-Mail

gavin.hattersley@millercoors.com

h. Number of workers employed
approx. 450

i. Type of Establishment (factory, mine, wholesaler, etc.)

Brewery

j. Identify principal product or service

Production and distribution of beer

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (3), (4) & (5)

of the National Labor Relations Act, and these unfair labor

practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Concerning the proposed closure of the Eden brewery, the employer has engaged in a pattern of bad faith bargaining violations including concealing and misrepresenting critical facts in bargaining, refusing to provide relevant information and refusing to negotiate over mandatory subjects.

The decision to close Eden was discriminatorily motivated and in retaliation for the Charging Parties' efforts to assist the employees at Shenandoah in the exercise of their Section 7 rights and for invoking of the Board's processes.

By these and other acts, the Employer violated the National Labor Relations Act.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

Teamsters Brewery & Soft Drink Workers Conference and Teamsters Local 391

4a. Address (Street and number, city, state, and ZIP code)

25 Louisiana Avenue, N.W., Washington, D.C. 20001

3910 Teamsters Place, Colfax, N.C. 27235

4b. Tel. No. 202-624-6921

4c. Cell No.

4d. Fax No. 202-624-8137

4e. e-Mail

laughton@teamsters633.com

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

International Brotherhood of Teamsters

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By 
(signature of representative or person making charge)

Robert M. Baptiste, Counsel

(Print type name and title or office, if any)

Tel. No. 202-223-0723

Office, if any, Cell No.
202-258-3513

Fax No. 202-223-9677

e-Mail

Rbaptiste@bapwild.com

Address 1150 Conn. Ave., NW, Ste. 315, Washington, DC 20036

3/11/16

(date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

SUBREGION 11
4035 University Pkwy Ste. 200
Winston Salem, NC 27106-3275

Agency Website: www.nlrb.gov
Telephone: (336)631-5201
Fax: (336)631-5210



Download
NLRB
Mobile App

March 14, 2016

Gavin Hattersley
MillerCoors, LLC
250 South Wacker Drive, Suite 800
Chicago, IL 60606

Re: MillerCoors, LLC
Case 10-CA-167896

Dear Mr. Hattersley:

Enclosed is a copy of the first amended charge that has been filed in this case.

Investigator: This charge is being investigated by Field Examiner JENNIFER G. CORBIN whose telephone number is (336)631-5196. If the agent is not available, you may contact Deputy Regional Attorney LISA R. SHEARIN whose telephone number is (336)631-5256.

Presentation of Your Evidence: As you know, we seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations in the first amended charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Procedures: Your right to representation, the means of presenting evidence, and a description of our procedures, including how to submit documents, was described in the letter sent to you with the original charge in this matter. If you have any questions, please contact the Board agent.

Very truly yours,

Claude T. Harrell Jr.
Regional Director

By:

Scott C. Thompson
Officer in Charge

Enclosure: Copy of first amended charge

cc: Douglas J. Heckler
MillerCoors, LLC
3939 W Highland Blvd.
Milwaukee, WI 53208-2866

John F. Wymer, III
Sherman & Howard, LLC
1555 Peachtree Street NE, Suite 850
Atlanta, GA 30309



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

SUBREGION 11
4035 University Pkwy Ste. 200
Winston Salem, NC 27106-3275

Agency Website: www.nlrb.gov
Telephone: (336)631-5201
Fax: (336)631-5210



Download
NLRB
Mobile App

March 14, 2016

Teamsters Brewery & Soft Drink Workers
Conference and Teamsters Local 391
PO Box 35405
Greensboro, NC 27425-5405

Re: MillerCoors, LLC
Case 10-CA-167896

Dear Sir or Madam:

We have docketed the first amended charge that you filed in this case.

Investigator: This charge is being investigated by Field Examiner JENNIFER G. CORBIN whose telephone number is (336)631-5196. If the agent is not available, you may contact Deputy Regional Attorney LISA R. SHEARIN whose telephone number is (336)631-5256.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. If you have additional evidence regarding the allegations in the first amended charge and you have not yet scheduled a date and time for the Board agent to obtain that evidence, please contact the Board agent to arrange to present that evidence. If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed.

Procedures: Your right to representation, the means of presenting evidence, and a

March 14, 2016

description of our procedures, including how to submit documents, was described in the letter sent to you with the original charge in this matter. If you have any questions, please contact the Board agent.

Very truly yours,

Claude T. Harrell Jr.
Regional Director

By:



Scott C. Thompson
Officer in Charge

cc: Robert M. Baptiste, Esq.
Baptiste & Wilder, P.C.
1150 Connecticut Ave., N.W.
Suite 315
Washington, DC 20036-4104



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

SUBREGION 11
4035 University Pkwy Ste 200
Winston Salem, NC 27106-3275

Agency Website: www.nlrb.gov
Telephone: (336)631-5201
Fax: (336)631-5210

March 17, 2016

Robert M. Baptiste, Esq.
Baptiste & Wilder, P.C.
1150 Connecticut Ave, N.W.
Suite 315
Washington, DC 20036-4104

Re: MillerCoors, LLC
Case 10-CA-167896

Dear Mr. Baptiste:

We have carefully investigated and considered your charge that MillerCoors, LLC has violated the National Labor Relations Act.

Decision to Partially Dismiss: Based on that investigation, I have decided to dismiss the portion of the charge that alleges that the Employer engaged in bad-faith bargaining concerning the closure of the Eden brewery by concealing and misrepresenting critical facts in bargaining, failing to provide relevant information, and refusing to negotiate over mandatory subjects, because there is insufficient evidence to establish a violation of the Act. All other portions of the charge remain outstanding.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlrb.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax or email. To file an appeal electronically, go to the Agency's website at www.nlrb.gov, click on **E-File Documents**, enter the **NLRB Case Number**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date: The appeal is due on **March 31, 2016**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than **March 30, 2016**. **If an appeal is postmarked or given to a**

delivery service on the due date, it will be rejected as untimely. If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before March 31, 2016**. The request may be filed electronically through the *E-File Documents* link on our website www.nlr.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after **March 31, 2016, even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

Claude T. Harrell JR.
Regional Director

By:



Scott C. Thompson
Officer in Charge

Enclosure

cc: Gavin Hattersley
MillerCoors, LLC
250 South Wacker Drive, Suite 800
Chicago, IL 60606

Douglas J. Heckler
MillerCoors, LLC
3939 W Highland Blvd
Milwaukee, WI 53208-2866

John F. Wymer, III
Sherman & Howard, LLC
1555 Peachtree Street NE, Suite 850
Atlanta, GA 30309

Teamsters Brewery & Soft Drink Workers
Conference and Teamsters Local 391
PO Box 35405
Greensboro, NC 27425-5405



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

SUBREGION 11
4035 University Pkwy Ste 200
Winston Salem, NC 27106-3275

Agency Website: www.nlrb.gov
Telephone: (336)631-5201
Fax: (336)631-5210

March 23, 2016

Robert M. Baptiste, Esq.
Baptiste & Wilder, P.C.
1150 Connecticut Ave, N.W.
Suite 315
Washington, DC 20036-4104

Re: MillerCoors, LLC
Case 10-CA-167896

Dear Mr. Baptiste:

We have carefully investigated and considered your amended charge allegations that MillerCoors, LLC has violated Section 8(a)(3) and (4) of the National Labor Relations Act.

Decision to Partially Dismiss: Based on that investigation, I have decided to dismiss your allegations that the Employer violated Section 8(a)(3) and (4) of the Act when it selected the Eden, North Carolina facility for closure because there is insufficient evidence to establish a violation of the Act.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlrb.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax or email. To file an appeal electronically, go to the Agency's website at www.nlrb.gov, click on **E-File Documents**, enter the **NLRB Case Number**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date: The appeal is due on **April 6, 2016**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than **April 5, 2016**. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before April 6, 2016**. The request may be filed electronically through the *E-File Documents* link on our website www.nlr.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after **April 6, 2016, even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

Claude T. Harrell Jr.
Regional Director

By: 

Scott C. Thompson
Officer in Charge

Enclosure

cc: Gavin Hattersley
MillerCoors, LLC
250 South Wacker Drive, Suite 800
Chicago, IL 60606

Douglas J. Heckler
MillerCoors, LLC
3939 W Highland Blvd
Milwaukee, WI 53208-2866

Teamsters Brewery & Soft Drink Workers
Conference and Teamsters Local 391
PO Box 35405
Greensboro, NC 27425-5405

John F. Wymer, III
Sherman & Howard, LLC
1555 Peachtree Street NE, Suite 850
Atlanta, GA 30309



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

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4035 University Pkwy Ste 200
Winston Salem, NC 27106-3275

Agency Website: www.nlrb.gov
Telephone: (336)631-5201
Fax: (336)631-5210

March 25, 2016

Robert M. Baptiste, Esq.
Baptiste & Wilder, P.C.
1150 Connecticut Ave, N.W.
Suite 315
Washington, DC 20036-4104

CORRECTED LETTER

Re: MillerCoors, LLC
Case 10-CA-167896

Dear Baptiste:

We have carefully investigated and considered your charge that MillerCoors, LLC has violated the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have decided to dismiss **the remaining allegations of the charge**, that the Employer violated Section 8(a)(3) and (4) of the Act when it selected the Eden, North Carolina facility for closure, because there is insufficient evidence to establish a violation of the Act.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlrb.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax or email. To file an appeal electronically, go to the Agency's website at www.nlrb.gov, click on **E-File Documents**, enter the **NLRB Case Number**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date: The appeal is due on **April 8, 2016**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than April 7, 2016. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before April 8, 2016**. The request may be filed electronically through the *E-File Documents* link on our website www.nlr.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after April 8, 2016, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

Claude T. Harrell Jr.
Regional Director

By:



Scott C. Thompson
Officer in Charge

Enclosure

cc: Gavin Hattersley
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UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

April 11, 2016

ROBERT M. BAPTISTE, ESQ.
BAPTISTE & WILDER, P.C.
1150 CONNECTICUT AVE NW
STE 315
WASHINGTON, DC 20036-4104

Re: MillerCoors, LLC
Case 10-CA-167896

Dear Mr. Baptiste:

We have received your appeal and accompanying material. We will assign it for processing in accordance with Agency procedures, which include review of the investigatory file and your appeal in light of current Board law. We will notify you and all other involved parties as soon as possible of our decision.

Sincerely,

Richard F. Griffin, Jr.
General Counsel

By:

Deborah M.P. Yaffe, Director
Office of Appeals

cc: CLAUDE T. HARRELL JR.
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May 13, 2016

ROBERT M. BAPTISTE, ESQ.
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Re: MillerCoors, LLC
Case 10-CA-167896

Dear Mr. Baptiste:

This office has carefully considered the appeal from the Regional Director's refusal to issue complaint. We agree with the Regional Director's decision and deny the appeal substantially for the reasons stated in his letters of March 17, 2016 and March 25, 2016.

The instant charge alleges that the Employer unlawfully failed to bargain over its decision to close its facility in Eden, North Carolina and failed to provide information relevant to that decision. The Union also alleges the decision to close was made to specifically target Eden employees for their efforts to organize the Employer's Shenandoah, Virginia facility. The Union additionally alleges that the closure was in retaliation for the Union filing charges and petitions with the National Labor Relations Board. We have reviewed your arguments on appeal, as well as the evidence from the underlying investigation, and we find that the evidence is insufficient to establish that the Employer's actions violated the National Labor Relations Act, as alleged.

First, based on the probative evidence presented, there was insufficient basis to find that the Employer's decision to close the Eden facility was based on labor costs. The decision to close the Eden facility was premised on an ongoing decrease in production demands and the preference to consolidate operations at a facility closer to the Employer's northeast market. The Employer never cautioned that the decision was based on labor costs, never postured during recent bargaining that labor costs were problematic or otherwise requested that the Union offer concessions to alter its decision. Rather, the evidence disclosed that based on a study of the Employer's brewery capacity, its Board of Directors decided to close the Eden facility on August 3, 2015. The evidence establishes that the Eden facility was selected because of its close proximity to other Employer-operated breweries, which created an overlap of work in servicing the same northeast market. Also, when the Employer considered transportation costs, it apparently determined it would realize substantial savings by closing the Eden facility compared to other facilities. In addition, the Employer determined that because Eden was an older facility, it would realize more savings in maintenance, equipment and production costs. Under these circumstances, the Employer was not obligated to bargain over its decision to close the facility

since the Union would be unable to offer any labor concessions that would the Employer's decision. See *Dubuque Packing*, 303 NLRB 386 (1991).

Second, as to the information request, because the Employer did not have to bargain over the decision, it was also not obligated to provide the Union with information regarding that decision. With respect to the contention that the Employer purposefully failed to inform the Union of its intention to close while it was negotiating a successor agreement from September 2014 to February 2015, the weight of the evidence does not support that the Employer engaged in any subterfuge or other fraudulent conduct. As noted above, the probative evidence established that the Employer's Board of Directors made the final decision to close the facility on August 3, 2015, and it formally announced its decision on September 14, 2015. Thus, there is no basis to find the Employer's representatives were aware of any final determination to close the plant while they were bargaining the successor agreement with the Union in the fall and winter months of 2014 into 2015.

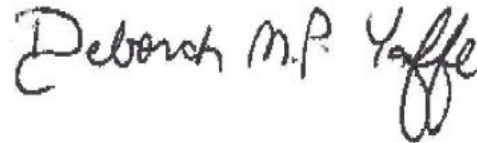
Third, the evidence is also insufficient to support the contention that the closure was in retaliation for Eden employees' attempts to organize the Shenandoah plant and the Union's filing Board petitions and charges. There was no evidence presented to show that the Employer's decision was unlawfully motivated. Rather, the evidence established that the Employer bargained for a successor contract with the Union at the Eden facility without incident, it notified the Union and employees of its decision to close when a determination was officially made, and it provided documents showing what it considered was at the heart of its decision. Moreover, the evidence seems to establish that the Employer remains willing to bargain over the effects of the closure. These factors undercut the argument that the Employer harbors animus and ill will against the Union and represented employees. While the Union argues that the Employer's rationale for shuttering an efficiently-run facility makes no business sense, that opinion alone, without evidence of animus or unlawful motivation, is insufficient to find the Employer's actions were unlawful.

Finally, to the extent you allege the Employer and another party may have engaged in improper conduct under federal antitrust laws surrounding a possible sale and acquisition of company assets that issue is not before this agency to review or otherwise decide. Moreover, any alleged impropriety under antitrust statutes does not translate to finding that the Employer's actions were unlawful under the National Labor Relations Act.

Accordingly, we find no basis for further proceedings because the Employer's actions did not violate the Act.

Sincerely,

Richard F. Griffin, Jr.
General Counsel



By:

Deborah M.P. Yaffe, Director
Office of Appeals

cc: CLAUDE T. HARRELL JR.
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